

Financial Services/Judiciary Housing Package

Summary of Financial Services Provisions

Servicer Safe Harbor: The bill provides a safe harbor from liability to mortgage servicers who engage in loan modifications workouts or other loss mitigation, regardless of any provisions in a servicing agreement, so long as the servicer acts in a manner consistent with the duty established in Homeowner Emergency Relief Act (maximize the net present value (NPV) of pooled mortgages to all investors as a whole; engage in loan modifications for mortgages that are in default or for which default is reasonably foreseeable; the property is owner-occupied; the anticipated recovery on the modification would exceed, on an NPV basis, the anticipated recovery through foreclosure). The bill also requires mortgage servicers who modify loans under the safe harbor to regularly report to Treasury on the extent, scope and results of the servicer's modification activities.

HOPE for Homeowners: The bill amends the HOPE for Homeowners Program provisions of the National Housing Act to encourage more lenders to participate by reducing the fees and writedowns, provide incentives for mortgage servicers to engage in modifications under the Program, and reduce administrative burdens to loan underwriters by making the requirements more consistent with standard FHA practices. Specifically, the bill would:

- Put the HUD Secretary in charge of running the program, leaving the Program Board's role as an advisory capacity.
- Change the upfront fee from 3% to "up to 2%."
- Change the annual fee from 1.5% to "up to 1%."
- Require the HUD Secretary to weigh both maximization of participation and collection of premiums when setting upfront and annual fees.
- Provide for "up to 50%" of appreciation profit share (instead of requiring 50%) and allow the sharing of this profit with the existing first lender to induce loan writedowns.
- Cap profit sharing at up to the appraised value of the property when the existing loan was made.
- Permit payments to existing servicers of up to \$1,000 for each successful refinance.
- Re-instate authority to conduct an auction to refinance loans on wholesale or bulk basis.
- Include a number of administrative changes, including:
 - o requiring conformity to FHA endorsement policies, as much as possible;
 - o eliminating the March 1, 2008 income affordability test;
 - o eliminating certification of no intentional default on other debts, applying certification of no false information being provided to the new FHA refi loan, and eliminating reference to going to jail because of false statements;
 - o providing for less prescriptive language regarding collection of income tax returns;

- o requiring HUD to conform program documents, forms, and procedures to those in place for regular FHA loans;
- o eliminating extraneous LTV restrictions on use of second lien loans to maintain property; and
- o barring borrowers with a net worth of more than \$1 million.

Offset: Reduces existing TARP authority by \$2.316 billion to offset cost of program changes.

FHA Approval: Contains numerous provisions to better ensure that predatory lending entities and individuals are not allowed to participate in the FHA home mortgage insurance program. Specifically, the bill would:

- Require HUD approval of all parties participating in the FHA single family mortgage origination process.
- Allow HUD to impose a civil money penalty against loan originators who are not HUD-approved and yet participate in FHA mortgage originations.
- Make clear that an applicant is ineligible for approval if the entity or any officer, partner, director, principal, or employee of the entity is: a) suspended or debarred by any Federal agency; b) under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee; c) subject to unresolved findings contained in a HUD or other governmental audit, investigation, or review; d) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees; e) convicted of a felony related to participation in the real estate or mortgage loan industry; or f) in violation of provisions of the S.A.F.E. Mortgage Licensing Act.
- Require that HUD receives notice of the debarment and any change in licensing status of a FHA approved mortgagee.
- Require HUD to expand the existing FHA process of reviewing new applicants for FHA approval for the purpose of identifying those representing a high risk to the Mutual Mortgage Insurance Fund and implement procedures that expand the number of loans reviewed by FHA for lenders approved within the last 12 months, and include a process for random reviews that is based on loan volume by newly approved participants.
- Require FHA approved mortgagees to use their HUD registered company names in all advertizing and to keep copies of all advertisements.

Deposit Insurance: The bill amends the Federal Deposit Insurance Act and the Federal Credit Union Act to enhance the liquidity and stability of insured depository institutions to ensure availability of credit and reduction of foreclosures. Specifically, the bill would:

- Make permanent the temporary increase in deposit insurance coverage for both the FDIC Deposit Insurance Fund and the National Credit Union Administration (NCUA) Share Insurance Fund to \$250,000 (the temporary increase is currently scheduled to sunset on December 31, 2009), and include an inflation adjustment provision for future coverage.
- Extend the time limit for an FDIC Restoration Plan to rebuild the reserve ratio of the Deposit Insurance Fund from 5 years to 8 years. Establish a 5-year restoration plan

for the NCUA, which is currently required to restore the equity ratio of the Share Insurance Fund within one year.

- Increase the FDIC's borrowing authority from the Treasury Department from \$30 billion to \$100 billion and the NCUA's Share Insurance Fund's borrowing authority from \$100 million to \$6 billion.
 - o Any amounts borrowed must be used only for insurance purposes.
 - o Neither the FDIC nor the NCUA has ever used this borrowing authority.
 - o The FDIC borrowing authority amount has not changed since 1991, even though the size of the industry has tripled. The NCUA borrowing authority has not changed since 1972 when it was established, even though the size of the industry has increased from \$13.8 billion in 1972 to \$813 billion at year-end 2008.
 - o Any money borrowed must be repaid, with interest, pursuant to a repayment schedule that must be in effect prior to receiving any money, and which is subject to a requirement to consult with and report to Congress.
- Allow the FDIC to charge systemic risk special assessments by rulemaking, on both insured depository institutions and depository institution holding companies. For holding company assessments, the concurrence of the Secretary of the Treasury would be required.